



STATE OF WASHINGTON  
ENERGY FACILITY SITE EVALUATION COUNCIL

PO Box 43172 • Olympia, Washington 98504-3172

March 15, 2005 Special Meeting Minutes

**1. CALL TO ORDER**

Chair Luce called the March 15, 2005 special meeting to order at the Lacey Community Center, 6729 Pacific Avenue SE, Lacey, Washington, at 1:35 p.m.

**2. ROLL CALL**

Council members present were:

Richard Fryhling	Department of Community, Trade and Economic Development
Hedia Adelsman	Department of Ecology
Chris Towne	Department of Fish and Wildlife
Tony Ifie (excused absence)	Department of Natural Resources
Tim Sweeney	Utilities and Transportation Commission
Patti Johnson (via phone)	Kittitas County Representative
Jim Luce	Chair

A quorum was present to conduct business.

Staff in attendance:

Allen Fiksdal – EFSEC Manager, Mike Mills – Compliance Manager, Irina Makarow – Siting Manager, Mariah Laamb – Council Secretary, Ann Essko – Council Attorney, Adam Torem – ALJ (Wild Horse and Kittitas Valley)

Guests in attendance:

John Lane – Counsel for the Environment, Lauri Vigue – Department of Fish & Wildlife, Darrel Peeples – Attorney (Kittitas Valley & Wild Horse projects), Kevin Smith – Invenergy, Mark Peters – Duke Energy, Kaye Emmons – Chehalis Power, Duncan McCaig – Chehalis Power

Guests attending via phone:

Steve Strasser – Northwest Enterprises, Jeff Ayres – Ecology, Jeff Slothower – Attorney for Steven Lathrop, Debbie Strand – Economic Development Group of Kittitas County, Ed Garrett – Resident Opposed to Kittitas Turbines (ROKT), Mike Robertson – ROKT, Scott Williams – Puget Sound Energy, Jim Hurson – Attorney for Kittitas County, Mot Hedges – Energy Northwest

### 3. ADOPTION OF PROPOSED AGENDA

Chair Luce asked for any changes to the agenda. Staff requested Starbuck be moved to the first topic on the agenda after the minutes and that Columbia be moved in front of Satsop. With those changes to the agenda, it was approved.

### 4. MINUTES

The minutes for February 8, 2005, were considered for approval by the Council.

**Motion: To accept the minutes from the February 8, 2005 meeting as prepared. Chris Towne made the motion and Dick Fryhling seconded the motion. The minutes were approved unanimously.**

### 5. STARBUCK POWER PROJECT

<i><b>Suspension of Application Review</b></i>	<i><b>Irina Makarow, Siting Manager</b></i>
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Irina Makarow provided a summary of past activities related to the Starbuck Power Project, starting with the Application to EFSEC for a Site Certification Agreement in August 2001, through EFSEC's recent letter notifying the Applicant of possible termination of the Application pursuant to Council Order No. 774.

On March 10, 2003, Council Order No. 774, Prehearing Order No. 1 - Additional Suspension of Adjudicative Proceedings, was issued outlining the Council's findings and conclusions regarding Starbuck Power's request to suspend review of the project for an indefinite period of time. In accordance with Order No. 774, the Council's review process for the Starbuck project has been suspended for the past 2 ½ years with a deadline of March 11, 2005 for the Applicant to request re-initiation of the review of the project. Absent such a request, EFSEC could take action to end the application review.

On February 8, 2005, EFSEC staff sent a letter to Mr. Strasser, notifying him of the pending March 15 deadline. Mr. Strasser contacted EFSEC staff and conveyed he will not pursue the continuation of review for this project. Staff will prepare their recommendation to the Council based on the requirements of Council Order No. 774 and present them to the Council for action at the April 12, 2005 meeting. Chair Luce inquired whether the Applicant was in arrears with any payments to EFSEC for review services rendered; staff confirmed that no funds were due for review of this project at this time.

### 6. KITTTITAS VALLEY WIND POWER PROJECT

<i><b>Report on Project Status and Hearing Schedule/Continuance</b></i>	<i><b>Irina Makarow, EFSEC Staff</b></i>
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Ms. Makarow reported that in September of last year the Applicant, Sagebrush Power Partners, requested a continuance of the hearings for the Kittitas Valley Wind Power project. The Council granted the request in Council Order No. 804, Prehearing Order No. 18, requiring

the Applicant to report back to the Council at its March 2005 meeting regarding the status of the project.

Darrel Peeples, representing the Applicant, requested that the status report be postponed until EFSEC's May monthly meeting. Given the upcoming hearings on the Wild Horse Project, the Applicant has not been able to have additional discussions with Kittitas County regarding Kittitas Valley matters. Council agreed to postpone the status report until the Council meeting scheduled for May 10.

**Motion: To postpone the status report by Sagebrush Power Partners to May 10. Tim Sweeney made the motion. Hedia Adelsman seconded the motion. The motion was accepted unanimously.**

## 7. SATSOP COMBUSTION TURBINE (CT) PROJECT

<i>Financial Guarantee</i>	<i>Mike Mills, EFSEC</i>
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Mr. Mills reported that Ann Essko, EFSEC Counsel had worked with Invenergy Vice President Kevin Smith in developing an instrument of assurance for funding site restoration of the Satsop Combustion Turbine Project. Mr. Smith has provided a draft Letter of Credit for Council approval. The draft Irrevocable Letter of Credit provides the financial assurances by Invenergy to fulfill any obligation regarding site restoration and is necessary for the transfer of the SCA from Duke Energy North America to Invenergy Grays Harbor, LLC. The Letter of Credit has been prepared by U.S. Bank National Association - Milwaukee, WI, through an Invenergy investor, Stark Event Trading, Ltd., in the amount of \$5,519,064.00. This Irrevocable Letter of Credit must be renewed annually and demand for payment may be made by EFSEC during the 12<sup>th</sup> month if no replacement is presented to the Council for the forthcoming year.

<i>Site Certification Agreement Modification</i>	<i>Mike Mills, EFSEC</i>
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Mr. Mills reviewed the January 2005, Duke Energy Grays Harbor, LLC request for the Council to approve a transfer of control of the Satsop CT Project (Project) from Duke Energy North America (DENA) to Invenergy Grays Harbor LLC (Invenergy). Invenergy will buy Duke Energy Grays Harbor, LLC, and then change the name of the corporate entity to Grays Harbor Energy LLC. In addition to requesting approval of the transfer of control, Duke Energy is also requesting the Council:

1. Accept the financial assurances offered by Invenergy, and release DENA from its corporate guarantee and all obligations regarding site restoration; and
2. Remove Energy Northwest from the SCA, and change the name of the certificate holder to Grays Harbor Energy LLC.

The request is subject to the provisions of Council rules, Chapter 463-66 WAC, which guide activities related to "amendments" of a Site Certification Agreement.

Mr. Mills reminded the Council of the public meeting they held on February 23, 2005 to receive comments on the proposed transfer. After hearing comments at that meeting, the Council issued Order No. 809 approving the transfer of control of the Project SCA, subject to conditions that Invenergy provide an acceptable form of a financial assurances instrument. Order No. 809 also stipulates that the Council will issue a resolution amending the SCA upon receipt and approval of the signed Letter of Credit and upon notification that the sale of the project to Invenergy has closed.

The draft Irrevocable Letter of Credit provided today, that Council Attorney Ann Essko and Invenergy VP Kevin Smith crafted together and that each believes is an acceptable form of financial assurance, will take effect automatically upon closing of the sale of the Project to Invenergy. The Council held a short discussion on the Letter of Credit prior to acting on the following motions:

**Motion: Council approve Order No. 812, recognizing that the form of Irrevocable Letter of Credit No. SLCWMIL01539, to be issued by U.S. Bank National Association, Milwaukee, Wisconsin, is accepted to satisfy the financial assurance requirements of the Project SCA and Site Restoration Plan; and upon receipt of the fully executed Letter of Credit in the approved form, EFSEC shall: 1) release Duke Energy from all obligations related to the Project SCA; 2) issue a resolution (see below) amending the Satsop Combustion Turbine Project SCA changing the certificate holder's name and removing Energy Northwest as a certificate holder; and 3) revise the Project Site Restoration Plan to recognize the approved financial assurances.**

**Tim Sweeney made the motion. Hedia Adelsman seconded the motion. The motion was approved unanimously.**

**Motion: Approve the adoption of Council Resolution No. 312 amending the Satsop Combustion Turbine Project SCA to reflect the change in corporate ownership to Invenergy and release Energy Northwest as a certificate holder; and directing that a Standby Trust be established to receive any proceeds from the Letter of Credit. Subject to: The resolution will become effective upon receipt of the fully executed "Letter of Credit" in the approved form, and notification that the sale (transaction) has closed.**

**Hedia Adelsman made the motion. Tim Sweeney seconded the motion. The motion was approved unanimously.**

## **8. COLUMBIA GENERATING STATION**

<b><i>Condenser Water Cleanup</i></b>	<b><i>Mike Mills, EFSEC</i></b>
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Mr. Mills reported that the Columbia Generating Station has been on line for 202 continuous days at 100% power. Columbia is planning to perform its biennial condenser scale removal cleaning in April 2005, just prior to their annual refueling outage scheduled for May 2005. The procedure will follow the same cleaning process used in the last cleaning done in 2003. The treated wastewater will be pumped to the WNP-4 service water pond and later discharged to the Columbia blowdown system.

Staff, in consultation with the Departments of Ecology and Fish and Wildlife, have reviewed the proposed condenser scale cleanout process and concluded that it meets National Pollutant Discharge Elimination System (NPDES) permit conditions, subject to confirmation that specific permit limitations are not exceeded prior to discharge through the blowdown system.

Mr. Mills reported that Ecology had raised a separate issue concerning the possibility the remaining sludge in the ponds could trigger state dangerous waste regulations. If the sludge does contain any dangerous wastes, it would be dealt with as a separate issue.

Staff recommended that the Council authorize Energy Northwest to perform the chemical cleaning of the Columbia main condenser for scale removal as outlined in their February 7, 2005 letter, provided that any cleaned water discharged through the blowdown system meets NPDES permit conditions.

Lauri Vigue, Department of Fish and Wildlife, asked for assurance that birds and avian species will be safe from the sludge in the WNP-4 service water pond during this process. Energy Northwest staff assured her measures would be taken to keep the birds away from the ponds and safe from the sludge in the ponds.

**Motion: Council authorize Energy Northwest to perform the cleaning of the Columbia main condenser for scale removal as outlined in their February 7, 2005 letter, provided that any cleaned water discharged through the blowdown system meets NPDES permit conditions.**

**Chris Towne made the motion and Tim Sweeney seconded the motion. The motion was accepted unanimously.**

## **9. CHEHALIS GENERATION FACILITY**

<b><i>Operations - Air Permit Monitoring</i></b>	<b><i>Mike Mills, EFSEC</i></b>
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Mr. Mills updated the Council on activities at the Chehalis Generation Facility (CGF). The Council is scheduled for a site visit to the CGF on the morning of May 10. The Council will be briefed on the noise mitigation program being implemented and will review the equipment that has been installed on site since the last Council visit.

Duncan McCaig, Plant Manager, reported that there have been no environmental incidents to report on site, the surface water runoff is clear and the facility is in good shape. They continue to monitor noise and are working with vendors to find the best products for minimizing noise.

Chehalis Power sent a letter on February 1, 2005, describing their proposal to use inlet air fogging for the gas turbines at the Chehalis Generation Facility. They believe these modifications would involve only minor technical changes to the generation process and would not trigger the need for a formal amendment to the CGF's Site Certification Agreement (SCA) or the Prevention of Significant Deterioration (PSD)/Notice of Construction (NOC) Permit. Chehalis Power is asking the Council to concur with their conclusion that the changes/upgrades being considered would not require modification of CGF's air quality permit. A flowchart of the inlet fogging process was presented to the Council members.

In a separate letter dated February 7, 2005, Chehalis Power described software upgrades for the turbine controls they are proposing to use to make the plant run more efficiently during warm weather periods. Installation of this equipment is scheduled for late April 2005.

After reviewing Chehalis Power's request and consulting with the Southwest Clear Air Agency, staff supports their conclusions that the proposed changes/upgrades can be implemented without revising CGF's SCA, PSD/NOC air quality permit. Staff recommends that the Council find:

- Proposed use of an Inlet Fogging System at CGF will not require amendments to the SCA or PSD/NOC permits; and
- Proposed Turbine Control Software upgrades will not require modification of the PSD/NOC permit.

The Council indicated its concurrence with Chehalis Power's request to implement the proposed operational changes and the position that modifications to the CGF SCA or PSD/NOC permit would not be required. Staff was directed to send Chehalis Power a letter expressing its concurrence.

## 10. PROJECT UPDATES

### Wallula Power Project

<b><i>SCA Termination Request</i></b>	<b><i>Mike Mills, EFSEC</i></b>
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Mr. Mills directed the Council to a February 8, 2005 letter from Competitive Power Ventures (CPV), acting on behalf of Wallula Generation, LLC, requesting termination of the Wallula Power Project Site Certification Agreement (SCA) and asking that the company be absolved of all monies perceived to be outstanding. Darrel Peeples, speaking for CPV, requested that any action be delayed until the May 10, 2005 meeting, because he will be unavailable the April 12, 2005 meeting. Council members discussed the issue of the funds perceived to be outstanding from the certificate holder and what to do about collecting the outstanding funds. The Council directed staff to stop assessing charges to the Wallula project until action can be taken on the outstanding funds issue and Wallula's SCA termination request.

### WNP-1

<b><i>Offsite Mitigation</i></b>	<b><i>Mike Mills, EFSEC</i></b>
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Mr. Mills reported that progress is being made on the contract with Benton County for the acquisition of the Badger Mountain property and that all parties are reviewing for accuracy prior to the issuance of the contract. Mike Mills and Dick Fryhling are scheduled to meet with Benton County Commissioners next week to discuss possible projects that could be considered for funding. Potential projects, along with the funding process, will be discussed by the mitigation sub-committee.

### BP Cherry Point

<b><i>PSD Appeal</i></b>	<b><i>Irina Makarow, EFSEC</i></b>
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Ms. Makarow presented an update on the progress of the PSD appeal filed with the Environmental Appeals Board (EAB) in Washington DC in February of this year. Cathy Cleveland (petitioner) filed the appeal and must have her brief filed by March 15, 2005. The response/briefing schedule is as follows:

1. If US EPA Region 10/EFSEC believes there are grounds for summary disposition of the Petition, we can file a response to that effect no later than 20 days after service of Petitioner's brief.
2. If the EAB determines summary disposition is appropriate, the EAB will issue an order. If the EAB determines summary disposition is not appropriate, or that the issue of summary disposition should be reserved until after a response on the merits is filed, the EAB will issue an order directing a response to be filed with 15 days of the EAB's order.
3. If US EPA Region 10/EFSEC elect not to file a response seeking summary disposition, response(s) to the merits of the petition must be filed no later than 30 days after service of Petitioner's brief.

Ms. Makarow stated she will keep the Council informed of the progress of this permit appeal.

## 11. EFSEC RULES

<i>Continuing Review of Rules</i>	<i>Allen Fiksdal, EFSEC Manager</i>
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Mr. Fiksdal reported that Chris Towne and staff have prepared a list of rules that need to be revised during the next rules revision effort. Ms. Towne noted that current adjudication is the subject of some of the rules that she has listed and recommended that the Council wait until the adjudication is completed before further work is done to the listed rules. The Council concurred.

## 12. EFSEC LEGISLATION

<i>Update on Proposed Legislation</i>	<i>Allen Fiksdal, EFSEC Manager</i>
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Mr. Fiksdal handed out an update on bills that are still being considered in the Legislature which may affect EFSEC in some way. There were 9 bills Allen has been tracking with 2 that could directly change the way EFSEC does business. The first (HB 1000) concerns Special Meeting notification and the second (SHB 1020) concerns the siting of electrical transmission lines.

## 13. CHAIR'S REPORT

No new items for the Chair's report.

## 14. OTHER

Mr. Fiksdal reported that Kittitas County Commissioners voted unanimously to deny EnXco a development agreement for their proposed wind farm near Ellensburg, stating it was "incompatible with the surrounding area."

Ms. Makarow reported that the SE2 PSD permit has been appealed before the Environmental Appeals Board by the Province of British Columbia. The SE2 Canadian transmission line permit denial appeal is still in the Canadian courts and no word yet as to the outcome.

## 15. ADJOURN

Chair Luce adjourned the meeting at 3:15 p.m.